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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SCOTT MARTIN,

Defendant and Appellant.

B213709

(Los Angeles County  
Super. Ct. No. NA069630)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Joan Camparett-Cassini, Judge. Affirmed.

Sharon Fleming, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Kenneth C. Bryne  
and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Scott Martin pled guilty to the crime of making criminal threats (Pen. Code § 422) and was sentenced to three years in prison. The trial court suspended the execution of the sentence and placed defendant on probation. After defendant violated his probation, the court revoked his probation and imposed his suspended sentence. On appeal, defendant contends that this case should be remanded for resentencing because the court did not explicitly state that it was aware it could reinstate his probation instead of imposing his suspended sentence. He also contends that the judgment should be reversed because, even if the court was aware that it could reinstate his probation, it abused its discretion by imposing his suspended sentence. We disagree and affirm.

#### ***FACTUAL AND PROCEDURAL BACKGROUND***

On March 24, 2006, defendant rode his bicycle to a Taco Bell in the City of Long Beach.<sup>1</sup> After entering the restaurant, defendant threatened the employee taking his order and preparing his food. He stated that if he did not get beef in his food, he would blow up the restaurant with bombs. He also stated that he had three pipe bombs in his hotel room. The employee and customers took the threats seriously and called the police after defendant left. The responding police officers encountered defendant on his bike several blocks away and arrested him. He was charged with the crime of making criminal threats in violation of Penal Code section 422.

Defendant was offered a plea agreement and entered a plea of no contest. The

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<sup>1</sup> The facts relayed were stipulated to as part of defendant's acceptance of the plea agreement.

court sentenced him to three years in prison but suspended the sentence on the condition that defendant successfully complete three years of probation. The pertinent conditions of his probation were to obey all laws, keep his probation officer advised of his residence and phone number at all times, and make court-ordered payments.

After being on probation for two-and-one-half years, defendant was arrested for allegedly committing a battery by striking a 74-year-old man in the face. This arrest was followed by a probation violation hearing. In addition to the arrest, the People presented evidence that defendant had violated several other conditions of his probation. The People argued that defendant had made no court-ordered payments and had not regularly reported his address to his probation officer. Defendant testified that he had been unemployed and homeless for much of the time that he was on probation, so was unable to make payments or secure a stable residence. He also testified that he had provided his probation officer with the addresses of the shelters at which he stayed. His probation officer at the time, Joe Raseknia, testified that defendant always looked clean and well-fed, such that his explanation was not credible. The probation report prepared for the probation violation hearing stated that defendant was not in compliance with the terms of his probation, that defendant would not benefit from being on probation, and that “any further consideration by the court to reinstate probation seems futile.” The probation report recommended that the court impose the suspended sentence but acknowledged that the court could, at its discretion, reinstate defendant’s probation instead.

At the end of the hearing, the court determined that defendant had violated the

conditions of his probation. First, the judge found that defendant had committed a battery by “slugg[ing]” the 74-year-old victim. Second, the court did not believe defendant’s explanation for his failure to make court-ordered payments and failure to adequately report his whereabouts. The court terminated defendant’s probation and imposed his suspended prison sentence. Defendant timely appealed.

### ***CONTENTIONS ON APPEAL***

On appeal, defendant contends that this case should be remanded for resentencing because the court did not explicitly state and may not have known that it could reinstate defendant’s probation. He further contends that, even if the court realized that it could reinstate his probation, the judgment should be reversed because the court abused its discretion by not reinstating probation. In response, the People contend that the court was not required to explicitly state that it had the power to reinstate probation and that it did not abuse its discretion when it imposed defendant’s suspended sentence.

### ***DISCUSSION***

#### ***1. The Trial Court Was Aware That It Could Reinstate Defendant’s Probation but Instead Decided to Impose His Suspended Sentence***

Defendant contends that this case should be remanded for resentencing because the trial court may not have been aware that it could reinstate his probation instead of imposing his suspended prison sentence after it revoked his probation. We disagree.

“[A] violation of the terms of probation does not automatically trigger both revocation of probation and imprisonment.” (*People v. Hawthorne* (1991))

226 Cal.App.3d 789, 795.) “Upon the decision to revoke probation, the trial court ha[s] three available options: to reinstate probation on the same terms; to reinstate probation with modified terms; or to terminate probation and commit the probationer to prison pursuant to the original sentence [that was imposed at the time of conviction].” (*People v. Latham* (1988) 206 Cal.App.3d 27, 29.) “[T]he record must clearly reflect the trial court understands that two separate and distinct decisions are involved: (1) to revoke; and (2) to sentence to state prison rather than to place on probation on new or modified conditions.” (*People v. Hawthorne, supra*, 226 Cal.App.3d at p. 795.) However, the trial court need not explain its refusal to reinstate probation when it imposes a sentence that was previously imposed and suspended. (*People v. Latham, supra*, 206 Cal.App.3d at pp. 29-30.)

While the trial court did not explicitly acknowledge that it had the authority to reinstate defendant’s probation, it was notified by the probation report that it had the power to do so. The probation report set forth the reasons that the probation officer believed defendant was in violation of his probation and then discussed whether probation should be reinstated. The probation report determined that “any further consideration by the court to reinstate probation seems futile.” Thus, the probation report addressed as two separate issues whether probation should be revoked and whether probation should be reinstated. The trial judge signed the probation report to indicate that the contents of the report had been read and considered in deciding how to resolve defendant’s case. Therefore, the trial court was aware that defendant’s probation could be reinstated and that the probation revocation issue was separate and

distinct from the probation reinstatement issue. It then decided them separately: it terminated defendant's probation because of his violations, considered his request for leniency, and then imposed his suspended prison sentence.

The court's failure to indicate that it lacked the authority to reinstate defendant's probation and its satisfaction with its decision to impose defendant's suspended sentence make this case distinguishable from *People v. Medina* (2001) 89 Cal.App.4th 318 (*Medina*), on which defendant relies. In *Medina*, the trial court imposed the probationer's suspended sentence after he violated his probation. (*Id.* at p. 319.) The trial court explicitly stated that it lacked the authority to reinstate probation on the same or modified terms and that it would probably have reinstated probation on modified terms if it had the authority to do so. (*Id.* at pp. 320-321.) Here, the trial court did not state or otherwise indicate that it lacked the authority to reinstate defendant's probation, and it was specifically advised by the probation report that it had the authority to reinstate probation if it so chose. The court also had no reservations about imposing defendant's suspended sentence: it considered defendant's explanations for the alleged probation violations to be impossible to believe, it found that defendant had violated his probation in several ways, and it was advised to impose the suspended sentence by the probation report.

Therefore, there is no need to remand for resentencing because the court was aware that it had the authority to reinstate defendant's probation, decided the probation revocation issue separately from the probation reinstatement issue, and expressed no reservations about imposing defendant's suspended sentence.

2. *The Trial Court Did Not Abuse Its Discretion When It Imposed Defendant's Suspended Sentence*

Defendant also contends that the trial court abused its discretion when it imposed his suspended sentence after revoking his probation. We disagree.

“Sentencing choices such as the one at issue here, whether to reinstate probation or sentence a defendant to prison, are reviewed for abuse of discretion. ‘A denial or a grant of probation generally rests within the broad discretion of the trial court and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner.’ [Citation.] A court abuses its discretion ‘whenever the court exceeds the bounds of reason, all of the circumstances being considered.’ [Citation.] We will not interfere with the trial court’s exercise of discretion ‘when it has considered all facts bearing on the offense and the defendant to be sentenced.’ [Citation.]” (*People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.) The trial court may consider the defendant’s probation performance when deciding whether to reinstate probation after a violation. (*People v. Jones* (1990) 224 Cal.App.3d 1309, 1316; *People v. White* (1982) 133 Cal.App.3d 677, 681.)

Here, the record indicates that the trial court considered all of the circumstances surrounding the alleged battery and the other probation violations before reaching a sentencing decision. The court considered testimony from the alleged victim of the battery, from defendant’s current probation officer, and from defendant himself. It also considered the probation report prepared for the probation violation hearing, which recommended imposing defendant’s suspended prison sentence. The multiple ways in

which defendant was found to have violated his probation over the course of the two-and-one-half-year probation period and the probation officer's recommendation that probation not be reinstated both support trial court's decision to impose defendant's suspended prison sentence. The decision was not arbitrary or capricious, and the court did not abuse its discretion in deciding that defendant would not benefit from further probation.

***DISPOSITION***

The judgment is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.